



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-360-10
Regulation title	Rules Governing General Educational Development Certificates
Action title	Fee increases and revised language to incorporate recent amendments to the <i>Code of Virginia</i> and changes to the Tests of General Educational Development (GED)
Document preparation date	November 10, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The proposed amendments to the existing regulations include an increase in testing fees, changes in the language governing to whom a Virginia GED Certificate may be issued, and changes in scoring requirements for issuance of a Virginia GED Certificate.

Testing fees are used to defray the cost of operating a testing center. The proposed amount is not so high as to be a financial burden for Virginia residents who want to take the GED Tests, but high enough to support the continued operation of a GED testing center. Language has also been included to define Virginia residency and to allow for the testing of non-residents at a higher rate.

Proposed changes pertaining to the eligibility of individuals to earn a GED Certificate are necessary to ensure that the regulatory language is not in conflict with language in the *Code of Virginia*. Current regulatory language would allow high school-aged students to qualify for a GED Certificate in violation of compulsory attendance laws.

Deletion of the requirement for individuals to wait a period of sixty days before retesting is necessary, as such a waiting period is arbitrary and without foundation. Furthermore, such a waiting period might preclude a qualified individual from obtaining employment, entering a post-secondary education or training program, or entering one of the branches of the armed services.

Proposed language is necessary to address the changes made to the scoring requirements established by the GED Testing Service of the American Council on Education. The new scoring requirements were set upon the release of the 2002 series of the GED Tests on January 1, 2002. The proposed language will allow for any future adjustments to the scoring requirements by the Board of Education or the GED Testing Service.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The legal authority to promulgate changes to 8 VAC 20-360-10 is found in §22.1-223 et seq. of the *Code of Virginia*. The Code provides discretion to the board in promulgating "appropriate standards and guidelines for adult education programs," including participation in preparing for and taking the GED Tests. It further requires the board to "assist school divisions with all diligence in meeting the educational needs of adults participating in adult education programs to master the requirements for and earn a Virginia General Educational Development (GED) Certificate or high school diploma."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Successful achievement on the GED Tests provides adults and eligible secondary students who have not or will not earn a high school diploma with the opportunity to earn a well-recognized secondary credential. Those who pass the GED Tests earn a GED Certificate issued by the Virginia Department of Education. Most employers, colleges, universities, and all of the armed forces recognize the GED Certificate.

The current regulation was effective September 1, 1980. Changes to the regulation are necessary in four areas:

- test administration fees for residents and non-residents
- age eligibility requirements for individuals to take the GED Tests
- waiting period before permission to retest
- scoring requirements to earn a Virginia GED Certificate

The fees that testing centers are allowed to charge under the current regulation are not adequate to support the costs of administering the GED Tests. The 72 local school divisions and two community colleges that are approved to operate the testing centers are subsidizing them. The proposed fee increase was determined after surveying existing testing centers and reviewing the fee structures of surrounding states.

Current language in the regulation would allow students to "legally withdraw" from school before age 18. This language is contradictory to language in the compulsory attendance law in the *Code of Virginia* and continues to misinform school division administrators, parents, and potential GED candidates between the ages of 16 and 18 years. This regulation is important in providing easy to understand information for the aforementioned parties. By referencing the relevant section of the compulsory attendance law in the eligibility section, the regulation can maintain consistency over time with the *Code of Virginia*.

There is no legitimate interest or educational foundation to require an individual to wait a period of 60 days before retesting. The waiting period arbitrarily assumes that all individuals must have at least 60 days to prepare for the retest and be successful. In some cases, an individual may be so close to passing that taking the necessary

subtest in a much shorter time could yield a positive result. The 60 days waiting period could keep individuals from obtaining employment, entering a post-secondary training or education program, or enlisting in one of the branches of the armed services.

GED Testing Service of the American Council on Education has always set the minimum standards that must be met in order for an individual to earn a GED credential (referred to as a Virginia GED Certificate in Virginia). States have the option of setting a higher standard, but not going lower than the GED Testing Service standard. Over the years the standard has changed on several occasions. On January 1, 2002, a new series of GED Tests with a completely different scoring structure was released. This new series of GED Tests is not psychometrically compatible with previous versions. To properly inform GED recipients, prospective employers, colleges and university admissions staff, armed forces recruiting personnel, and other interested parties, it is important to delineate the score requirements necessary to earn a Virginia GED Certificate based on when the individual took the GED Tests.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process to amend this regulation was chosen for three reasons. First, the regulation was effective more than 20 years ago and is not consistently followed in practice due to changes in the *Code of Virginia* and GED Testing Service policies. It is important to ensure that testing centers are in compliance with the appropriate governing regulation and that the governing regulations are consistent with all applicable laws of Virginia and policies of the GED Testing Service. Second, existing GED testing centers are experiencing difficulty maintaining financial solvency due to the low fee structure. If these centers close as a result, fewer individuals will be able to take the GED Tests in Virginia. Not having a GED Certificate may result in individuals not obtaining employment, not entering a post-secondary education or training program, and not entering one of the branches of the armed services.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The substantive changes to the existing regulation are the following:

- For Virginia residents, increase the fees from \$10 to \$50 to take the complete battery of GED Tests and \$2 to \$10 for each individual test. Additionally, permit non-residents to take the GED Tests and charge \$75 for the full battery and \$15 for each individual test.
- Delete existing language in the age eligibility section and refer to *Code of Virginia* section defining GED testing eligibility.
- Amend scoring requirement information to reflect that a GED Certificate is earned according to the scoring requirement in place at the time the individual took the GED Tests.
- Delete the section on requiring individuals to wait 60 days to retest.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.
- If there are no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulatory action will affect primarily individuals taking the GED Tests and those businesses, agencies, and organizations that have an interest in individuals who have earned or will earn a GED credential. The primary advantage to the individual taking the GED Tests is the ability to determine his/her own readiness to test and retest. The only disadvantage to individuals who take the Tests is the increased testing fee. Barring any future legislative subsidy to GED testing centers, this is considered necessary, unless individuals are willing to expect fewer opportunities to test due to the possible closure of existing GED testing centers. Fewer GED test takers reduce the pool of potential applicants for employment, college and university admission, and recruitment into one of the branches of the armed services. Hence, maintaining a relatively high pool of individuals able to take the GED Tests on their own terms is an advantage to those with an interest mentioned previously.

The primary advantage to the Commonwealth and local GED testing centers is that individuals taking the GED Tests will bear a greater share of the cost of test administration. The Department of Education benefits by having a clearly described regulation that is consistent with state law and the policy of the GED Testing Service. There are no disadvantages to the Commonwealth, the Department of Education, or local GED testing centers expected from this regulatory action.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$ 0
Projected cost of the regulation on localities	\$ 0
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals primarily affected by this regulatory action are the individuals taking or planning to take the GED Tests.
Agency's best estimate of the number of such entities that will be affected	(Estimated number of test takers per year) 20,000
Projected cost of the regulation for affected individuals, businesses, or other entities	(Number of test takers X increase in cost of testing) \$ 300,000

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The only viable option considered in lieu of raising testing fees is to allow the local GED testing programs to assess an "administrative fee" to help them cover the rising costs of test administration. However, such action could result in widely disparate costs to GED candidates. In certain cases, those individuals least able to afford the price of testing might have to pay the most.

No other alternatives to the proposed regulatory action necessitated by the changes in the *Code of Virginia* and revisions to the GED Tests were considered. In this case, regulatory action is required.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed Regulations Governing General Educational Development Certificates will not erode the authority or rights of parents in the education, nurturing, and supervision of their children. Adults earning a GED Certificate will be better prepared to assist in meeting their own children’s educational needs.

Earning a GED Certificate will assist recipients in increasing economic self-sufficiency. Earning a GED Certificate also will improve the self-pride of individuals and encourage them to take more responsibility for themselves and their families. The proposed regulations will not erode marital commitment. GED Certificate recipients may increase their earning power if they use opportunities to increase their education and training related to employment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-360-10 - 1.	1.	The regulation currently states that an individual must be at least 18 years of age to take the GED Tests, unless special circumstances warrant testing individuals as young as 16 years of age.	The proposed change incorporates language to assure that students are at least 18 years of age and not currently enrolled in public or private high school (may not be enrolled in public or private high school as per GED Testing Service), unless they meet special circumstances defined in <i>Code of Virginia</i> , § §22.1-254 and 22.1-254.2.
8 VAC 20-360-10 - 1.a	Delete	The section states that a student at least 16 years of age may take the GED Tests if he/she has been legally withdrawn for one year.	This section should be deleted as this conflicts with compulsory attendance law – see <i>Code of Virginia</i> , § §22.1-254 and 22.1-254.2.
8 VAC 20-360-10 - 1.b	Delete	The section states that a student at least 16 years of age may take the GED Tests if he/she has been legally	This section should be deleted as this conflicts with compulsory attendance law – see <i>Code of Virginia</i> , § §22.1-254 and 22.1-254.2.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		withdrawn for six months and has “successfully completed the program.”	
8 VAC 20-360-10 - 1.c	Delete	The section states that a student at least 16 years of age may take the GED Tests if he/she produces a “letter from an employer, a recruiting officer of the armed forces, or an admissions officer of an institution of higher learning or postsecondary training institution” stating their acceptance and if the applicant also has a letter from an official of the school last attended that it is okay for the individual to take the GED Tests.	This section should be deleted as this conflicts with compulsory attendance law – see <i>Code of Virginia</i> , § §22.1-254 and 22.1-254.2.
8 VAC 20-360-10 - 2.	Delete	This section states that no high school credit is required in order to earn a GED Certificate.	This section should be deleted as the language is superfluous and without any useful meaning to the regulation.
8 VAC 20-360-10 - 3.	Delete (included in new section 8 VAC 20-360-30)	This section states that anyone taking the GED Tests must be a Virginia resident for at least 30 days prior to applying.	This section should be deleted and incorporated into the fee section (8 VAC 20-360-30). Determining the length of time an individual has been a resident of Virginia is not a feasible task for testing centers.
8 VAC 20-360-10 – 4. and 4.a thru 4.d.	8 VAC 20-360-10 – 2. and 2.a thru 2.d	This section provides the test scoring requirements to earn a GED Certificate for only one specific time period (the period from July 1, 1979 to December 31, 1997).	Score requirements have changed five times in the life of the GED testing program in Virginia. It is important to examiners, GED earners, and others (e.g. employers, and colleges and universities) to know the requirements at the different time periods. The proposed change defines the score requirements by time period and provides language that assures this section will not need any new amendments to the regulation.
	8 VAC 20-360-10 – 3		This section is included to ensure that official GED testing centers in Virginia have the authority to determine eligibility for individuals to take the GED Tests based on state law and applicable policies of GED Testing Service and keep them free of external pressures to test unauthorized individuals.
8 VAC 20-360-20 -	No change	This section requires individuals to wait 60 days to retest in any area.	Delete the section referring to the 60-day waiting period to retest. GED testing Service has no position on how long a person must wait to retest. There is no

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>reliable research to support that this is useful. To keep a person tied to waiting this arbitrary period of 60 days could keep an individual from obtaining employment, entering a postsecondary education or training program, or entering one of the branches of the armed services.</p> <p>Add language to this section to clarify how many times a person is permitted to retest as per GED Testing Service policy and language to clarify when scores may be combined with previous tests. This is necessary to assist individuals taking the GED Tests and for the GED examiners.</p>
8 VAC 20-360-30	No change	This section indicates that individuals must register to take the GED Tests in the school division in which they live and states that the fees are \$10 to take the complete battery of GED Tests and \$2 for each individual subtest.	<p>In this section, language about where the individual must register should be deleted and replaced with language that permits them to register at any Official Virginia GED Testing Center. This is recommended both as a matter of convenience for the test taker and to ensure that testing centers are directly involved in determining an individual's eligibility to take the GED Tests from the point of registration.</p> <p>Language is included to define residency as per § 46.2-323.1 of the <i>Code of Virginia</i>. This provides GED examiners and those that register test takers with clear instruction on what constitutes a resident.</p> <p>Language is included that permits GED testing in Virginia for non-residents. Since Virginia residents are permitted to test in other states, this practice should be allowed in Virginia for non-residents.</p> <p>Higher testing fees are proposed. This is essential to ensure that Virginia GED testing centers are able to continue testing and to continue maintaining the high standards of test security that they have established over the last three decades. The costs of examiner time, periodic special accommodations for GED testing, testing materials have caused some programs to seriously consider not continuing. If this happens, fewer individuals will be able to take the GED Tests and many will have to travel much further to do so.</p> <p>Higher testing fees are proposed for non-residents, since most of the centers</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			operate with Virginia taxpayer dollars.

**Rules Regulations Governing General Educational Development
Certificates**

8 VAC 20-360-10

8 VAC 20-360-10. Eligibility.

Certificates may be issued to ~~adults who are no longer enrolled in regular day school programs and~~ individuals who meet the following minimum requirements:

1. Age. An applicant must be at least 18 years of age and not enrolled in a public or private high school. Under special circumstances, which are ~~considered by local school authorities to be justifiable~~ consistent with the Code of Virginia, §§ 22.1-254 and 22.1-254.2, the age limit may be lowered to 16 years of age. ~~if an applicant is legally withdrawn from school. Notwithstanding the foregoing requirement, applicants below 18 years of age shall provide one of the following:~~
 - a. ~~A letter from an official of the regular day school last attended starting that the applicant has been legally withdrawn from school for a period of one year;~~
 - b. ~~A letter from an official of the regular day school last attended stating that the applicant has been legally withdrawn from school for a period of six months, and a letter from a director of a high school review program stating that the applicant has successfully completed the program; or~~
 - c. ~~A letter from an employer, a recruiting officer of the armed forces, or an admissions officer of an institution of higher learning or postsecondary training institution stating that the applicant meets all requirements for employment or admissions, with the exception of a General Educational Development certificate, and a letter from an official of the regular day school last attended recommending the applicant be tested.~~
2. ~~High school credit. Not required.~~
3. ~~Residency. An individual must be a resident of the Commonwealth of Virginia for a minimum of 30 days immediately prior to making application to take the test.~~
4. 2. Minimum test scores requirements. ~~A standard test score battery average of 45 (a total score of 225) with no individual test standard score below 35 is required. The following minimum score requirements must be met depending upon when the candidate took the General Educational Development (GED) Tests:~~
 - a. For test batteries completed on or after January 1, 2002, individuals must achieve the minimum passing score requirements set by the GED Testing Service of the American Council on Education or such higher score requirements that may be established by the Virginia Board of Education.

- b. For test batteries completed between January 1, 1997, and December 31, 2001, individuals must achieve at least an average battery score of 45, a total standard score of 225, and no individual test score below 40;
- c. For test batteries completed between July 1, 1979, and December 31, 1996, individuals must achieve at least an average battery score of 45, a total standard score of 225, and no individual test score below 35; or
- d. For test batteries completed prior to July 1, 1979, individuals must achieve at least an average battery score of 45 (rounded up), a total standard score of 223, and no individual test standard score below 35.

3. In-state testing. Only those entities designated by the Department of Education as Official Virginia GED Testing Centers shall determine whether an individual is eligible to take GED Tests in accordance with policies of the GED Testing Service of the American Council on Education and the Code of Virginia, § 22.1-254.2. GED Tests shall be administered only at Official Virginia GED Testing Centers or addendum test sites that have been approved by the Virginia GED Administrator and the GED Testing Service.

- 5 4. Credit for scores on GED Tests administered out-of-state. Official Test scores may be accepted from an approved GED battery of tests administered by an approved GED center state agency, an official jurisdiction responsible for overseeing GED testing, or an official GED testing center outside of Virginia. provided the requirements established by the Commonwealth of Virginia for the issuance of a certificate have been fulfilled.

8 VAC 20-360-20. Retesting.

An applicant who fails to qualify for a certificate on the basis of test scores may be retested, provided at least 60 days have lapsed since the last testing. individual may take the full battery of tests up to three times during a calendar year to qualify for a General Educational Development Certificate. Test scores may be combined in accordance with GED Testing Service policy.

8 VAC 20-360-30. Application and fees.

A Virginia resident must Applicants may make application in the school division in which he lives to any Official Virginia GED Testing Center. The application must be approved by the school division superintendent or his designee. An applicant approved by the local school official is required to pay a fee of \$10 to take the entire battery of five tests or \$2.00 for each individual test. Official Virginia GED testing centers may charge Virginia residents a fee not to exceed \$50 for a battery of five tests or \$10 for each individual test. An individual is deemed to be a resident if he presents evidence of residency required by the Division of Motor Vehicles as stated in the Code of Virginia, § 46.2-323.1 or other evidence of residency accepted by the school division.

Non-residents may be tested and charged a fee not to exceed \$75 for a battery of five tests or \$15 for each individual test. No additional charges shall be levied upon an applicant.

Statutory Authority: Section 22.1-223 et seq. of the Code of Virginia.

Historical Note: Derived from VR 270-01-0035

~~Effective: September 1, 1980~~